

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT AND  
VARIANCE PERMIT GRANTED BY  
KING COUNTY TO R.G. HOSTETLER,

J. HOWARD AND BARBARA G. PLIMPTON,  
ROBERT FERGUSON, and  
MR. and MRS. PHILIP BLAKE,

Appellants,

v.

KING COUNTY, R.G. HOSTETLER,  
and STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY,

Respondents.

SHB Nos. 84-23, 84-24  
& 84-25

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of a decision to issue a shoreline substantial development permit and shoreline variance, came on for hearing before the Shorelines Hearings Board, Gayle Rothrock, Chairman, Lawrence J. Faulk, Rodney M. Kerslake, Richard A. O'Neal, Nancy R. Burnett, and Wick Dufford, on October 15, 1984, in Seattle, Washington. Mr. Dufford presided.

1 Appellants Plimpton, Ferguson and Blake all appeared pro se.  
2 Respondent King County did not appear. Respondent Hostetler was  
3 represented by Alan L. Froelich, attorney at law. Respondent  
4 Department of Ecology was represented by Jay J. Manning, Assistant  
5 Attorney General.

6 Witnesses were sworn and testified. Exhibits were examined. From  
7 the testimony heard and exhibits examined, the Board makes these

8 FINDINGS OF FACT

9 I

10 This matter arises in King County, along the shores of Lake  
11 Washington near Kirkland in a shoreline environment designated "urban"  
12 under the King County Shoreline Master Program (KCSMP). Lake  
13 Washington, because of its size, is a shoreline of statewide  
14 significance as defined in the Shoreline Management Act.

15 II

16 The respondent-permittee, Hostetler, is the owner of residential  
17 waterfront property and adjoining shorelands. The appellants are  
18 owners of neighboring properties in a tier ranging inland from  
19 Hostetler's. Both Hostetler's property and the properties of  
20 appellants were at an earlier time part of a tract in single  
21 ownership. When this tract was broken up, the purchasers all acquired  
22 an interest in a narrow non-residential parcel running along one side  
23 of each lot, terminating in a slim section of beach with adjoining  
24 shorelands. This parcel is called the community beach lot and all who  
25 share an interest in it have rights of access to the beach and the

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 lake. The community beach lot is immediately adjacent to Hostetler's  
2 property along the waterfront to the north.

3 III

4 Prior to 1969, a community dock was built into the lake from the  
5 community beach lot. This structure is now some 130 feet long. At  
6 one time it was "L" shaped with the foot of the "L" extending south  
7 and resting on four pilings. The decking for this portion of the dock  
8 no longer exists, but the four pilings are still in place. The  
9 appellants are users of the community dock.

10 IV

11 There is a dispute between the appellants and Hostetler as to  
12 whether the four pilings lie on Hostetler's property or on the  
13 shorelands which form part of the community beach lot. Hostetler say-  
14 the pilings are on his property. Appellants say they are on the  
15 community beach lot. In a 1976 decision, the King County Superior  
16 Court (Civil No. 796711) entered Findings of Fact, Conclusions of Law  
17 and a Judgment establishing the lateral shoreland boundary between  
18 these two lots in descriptive terms. Hostetler and the appellants now  
19 read this decision in different ways, each interpreting it to support  
20 his own view of where the pilings are located.

21 V

22 In February of 1984, Hostetler applied to King County for the  
23 permits required under the Shoreline Management Act (SMA) to build a  
24 new dock extending waterward from his own lot. The proposal called  
25 for an "L" shaped single family residential dock 110 feet long with

1 600 square feet of surface area, plus two mooring pilings located  
2 sixteen feet off the end of the dock. The dock, as proposed, would be  
3 located 15 feet from Hostetler's south property line and approximately  
4 33 feet from the closest point on what the application shows to be the  
5 north property line--the boundary with the community beach lot  
6 shorelands. The application shows the four old pilings in question as  
7 being on Hostetler's property and requests permission to remove these  
8 pilings as a part of the new dock project.

9 VI

10 The water depth at the end of the proposed new dock measures  
11 approximately seven feet. The water depth 80 feet out from shore  
12 measures approximately four feet, a water depth insufficient to moor  
13 sailboats and larger powered pleasure craft. Such boats are the type  
14 and size commonly moored in the neighborhood. Moorage of such  
15 pleasure craft in front of single family residences is a permitted use  
16 in the "urban" shoreline environment under the KCSMP. The three docks  
17 in the immediate vicinity measure 125 feet, 130 feet and 128 feet long.

18 VII

19 The two mooring pilings requested at the end of the new dock are  
20 to allow a four-point mooring to secure a boat against wind and waves  
21 and to keep it from chafing against the dock.

22 VIII

23 The plans for Hostetler's proposed dock call for it to be angled  
24 towards the community dock with the foot of its "L" shape pointing  
25 towards the community dock. The result will be constricted water

1 space near the ends of the two docks unless the four old pilings are  
2 removed.

3 IX

4 Hostetler's proposed dock is no closer to his south property line  
5 because of the side line set-back for docks established under the  
6 KCSMP. He has chosen the angle of the new dock from the shore in  
7 order for the dock to run parallel to his south property line. Given  
8 the configuration of his lot, his proposal puts the proposed dock as  
9 far from the community dock on the north as is possible without  
10 intruding into the property of his neighbor on the south.

11 X

12 In connection with the processing of Hostetler's application, the  
13 shoreline planner for King County assigned to the matter reviewed  
14 relevant documents, including the Findings and Conclusions from King  
15 County No. 796711, and visited and examined the site of the proposal.  
16 The record and his field observations caused him to conclude that  
17 Hostetler's belief that the four old pilings are on Hostetler's  
18 property is reasonable. He recommended that the permit, as applied  
19 for, be granted.

20 XI

21 On May 23, 1984, King County issued a decision approving  
22 Hostetler's application. The approved project included the removal of  
23 the four old pilings. Indeed the removal of these pilings formed the  
24 basis of the approval insofar as non-interference with navigation is  
25 concerned.

1 XII

2 On June 14, 1984, the Department of Ecology approved the shoreline  
3 variance relating to the length of the proposed dock.

4 XIII

5 The appellant neighbors sought review before this Board on June  
6 22, 1984, raising three issues:

7 1. Whether the King County Master Program requires ownership of  
8 property as a prerequisite for a shoreline permit to develop that  
9 property?

10 2. Whether the removal of the four old pilings allowed by the  
11 shoreline permit is consistent with the King County Shoreline Master  
12 Program or the Shoreline Management Act?

13 3. Whether the proposed dock is consistent with the King County  
14 Shoreline Master Program and the Shoreline Management Act?

15 IV

16 Any Conclusion of Law which should be deemed a Finding of Fact is  
17 hereby adopted as such.

18 From these Findings the Board comes to these

19 CONCLUSIONS OF LAW

20 I

21 Docks (piers) are permitted in the urban shoreline environment  
22 under the KCSMP, Section 25.16.140. That section limits length as  
23 follows:

24 The maximum waterward intrusion of any portion of any  
25 pier shall be eighty feet, or the point where the  
26 water depth is thirteen feet below the ordinary high  
water mark, whichever is reached first.

1 Accordingly, the County properly required a variance for the dock  
2 proposed by Hostetler to extend 110 feet with mooring pilings 126 feet  
3 off shore.

4 II

5 Neither the SMA, chapter 90.58 RCW, nor the rules of the DOE  
6 implementing the point system for developments on shorelines of the  
7 state, chapter 173-14 WAC, require an interest in the property before  
8 a permit to develop can be granted. Casey v. City of Tacoma, SHB No.  
9 79-19 (1979). Likewise, the KCSMP does not require ownership of  
10 property as a prerequisite for a shoreline permit to develop that  
11 property. It does require that the identity of the owner be  
disclosed, but the County does not attempt to look behind the  
13 assertions of ownership made in applications for such permits.

14 III

15 Removal of the four old pilings allowed by the permit at issue is  
16 not inconsistent with any provision of the KCSMP or the SMA. Such  
17 removal would eliminate a hazard to navigation, a result manifestly in  
18 keeping with shoreline management policies.

19 IV

20 The proposed dock is consistent with the KCSMP and the SMA, if the  
21 four old pilings are removed. The use is a permitted use under the  
22 master program and a preferred use under policies of the Act. The  
23 extra length of the dock is justified under the relevant variance  
24 criteria set forth in WAC 173-14-150(3).

V

The strict application of the 80-foot length limitation would preclude a reasonable permitted use: the mooring of boats of moderate draft, a practice commonly carried on elsewhere in the neighborhood. The master program suggests that a 13-foot water depth is considered appropriate for such moorage, almost twice the depth that will be made available here even with the increased dock length. The hardship requiring the variance is related to naturally occurring shallow water and does not result from deed restrictions or the applicant's own actions. Moreover, the variance will not constitute a grant of special privilege not enjoyed by other properties in the area. The proposed dock will protrude a shorter distance offshore than any docks on surrounding properties. It is the minimum necessary relief to allow the mooring of pleasure craft of modest draft.

VI

Given the constraints imposed by law (15-foot side property line set back, KCSMP Section 25.16.120C.), and the size and configuration on Hostetler's property, the project provides the most room possible for other like activities in the area. It is in location and design compatible with such uses and will not cause adverse effects to adjacent properties or the shoreline environment designation. However, this will not be the case unless the four old pilings, which are the focus of the controversy, are removed. Similarly public rights of navigation, public rights to use the shorelines and the public interest generally will not be adversely affected if the fou.



1 old pilings are taken out. If they are not removed, though, the  
2 adjacent properties and navigational values will be negatively  
3 affected.

#### 4 VII

5 Under RCW 90.58.180(1) this Board is empowered to review the  
6 granting, denying or rescinding of permits on shorelines of the state  
7 issued pursuant to RCW 90.58.140. It is not empowered to quiet title  
8 to real property. Neither is King County so empowered when it rules  
9 on shorelines permits. The most the County can do is to make  
10 tentative judgments about property boundaries as an aid in deciding  
11 whether a particular development as proposed is reasonable and  
12 appropriate. The most the Board can do is to review the permit as  
13 conditioned and measure it against the statutory criteria set forth in  
14 RCW 90.58.140. The property line dispute which the parties raise  
15 cannot be resolved in this forum.

#### 16 VIII

17 The limitations on this Board's jurisdiction also mean, of course,  
18 that it cannot repeal the law of trespass. Though the permit may  
19 allow the removal of the four old pilings, it authorizes this only as  
20 a matter of shorelines law. It does not give anyone access to  
21 another's property.

22 For this reason it is essential that the question of where the  
23 pilings lie be definitively resolved before construction commences  
24 under this permit. To build the dock and then discover that the old  
25 pilings cannot be removed would present a problem of interference wit

1 navigation which would be contrary both to the law and to the intent  
2 of the permit decision of King County in this case.

3 We construe the County's affirmative ruling on Hostetler's  
4 application to require the removal of the four old pilings as a  
5 condition precedent to the construction of the dock.

6 Absent resolution of the boundary issue, therefore, Hostetler can  
7 proceed to commence the project by removing the pilings only at his  
8 own peril.

9 IX

10 Any Finding of Fact which should be deemed a Conclusion of Law is  
11 hereby adopted as such.

12 From these Conclusions the Board enters this  
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ORDER

The shoreline substantial development permit and the shoreline variance granted by King County to R.G. Hostetler under Application Nos. 010-84-SH, 009-84-SV, as construed above, are affirmed.

DATED this 14<sup>th</sup> day of January, 1985.

SHORELINES HEARINGS BOARD

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